

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRODERICK WARFIELD,

Plaintiff,

v.

UNITED STATES AIR FORCE, et al.,

Defendants.

No. 2:20-cv-00853 KJM AC PS

ORDER

Plaintiff is proceeding in this action pro se. Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to the undersigned by Local Rule 302(c)(21). Plaintiff was granted leave to proceed in forma pauperis, and his initial complaint was found unsuitable for service. ECF No. 3. Now before the court for screening is plaintiff's First Amended Complaint (FAC).

I. Screening Standard

The federal IFP statute requires federal courts to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Plaintiff must assist the court in determining whether or not the complaint is frivolous, by drafting the complaint so that it complies with the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). The Federal Rules of Civil Procedure are available online at www.uscourts.gov/rules-

1 policies/current-rules-practice-procedure/federal-rules-civil-procedure.

2 Under the Federal Rules of Civil Procedure, the complaint must contain (1) a “short and
3 plain statement” of the basis for federal jurisdiction (that is, the reason the case is filed in this
4 court, rather than in a state court), (2) a short and plain statement showing that plaintiff is entitled
5 to relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the relief
6 sought. Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth simply, concisely and directly.
7 Fed. R. Civ. P. 8(d)(1). Forms are available to help pro se plaintiffs organize their complaint in
8 the proper way. They are available at the Clerk’s Office, 501 I Street, 4th Floor (Rm. 4-200),
9 Sacramento, CA 95814, or online at www.uscourts.gov/forms/pro-se-forms.

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
11 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the
12 court will (1) accept as true all of the factual allegations contained in the complaint, unless they
13 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the
14 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327; Von
15 Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010).

16 The court applies the same rules of construction in determining whether the complaint
17 states a claim on which relief can be granted. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (court
18 must accept the allegations as true); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (court must
19 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a
20 less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520
21 (1972). However, the court need not accept as true conclusory allegations, unreasonable
22 inferences, or unwarranted deductions of fact. W. Min. Council v. Watt, 643 F.2d 618, 624 (9th
23 Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice to state a
24 claim. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555–57 (2007); Ashcroft v. Iqbal, 556 U.S.
25 662, 678 (2009).

26 To state a claim on which relief may be granted, the plaintiff must allege enough facts “to
27 state a claim to relief that is plausible on its face.” Bell Atlantic Corp., 550 U.S. at 570. “A claim
28 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the

reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft, 556 U.S. at 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity to amend, unless the complaint’s deficiencies could not be cured by amendment. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987), superseded on other grounds by statute as stated in Lopez v. Smith, 203 F.3d 1122 (9th Cir. 2000)).

II. The Complaint

Plaintiff alleges federal question jurisdiction pursuant to 28 U.S.C. § 1331. ECF No. 1 at 7. The FAC, like the initial complaint, is difficult to decipher. Indeed, it appears to be substantially similar to plaintiff’s initial complaint, with some reordering and removing of pages. Compare, ECF No. 1 and ECF No. 4. Plaintiff states he is bringing claims under the First, Fourth, Fifth, Eighth, Ninth, and Fourteenth Amendments; the Information Privacy Act; Breach of Contract; 5 U.S.C. Chapter 75 Unfair Practices; 5 U.S.C. § 7116 Unfair Labor Practices; 10 U.S.C. Role of Armed Forces; 10 U.S.C. § 1034 Prohibition of Retaliatory Personnel Actions; 10 U.S.C. § 275 Defense Instruction; 10 U.S.C. § 271-255 Chapter 15; 18 U.S.C. Sexual Harassment and Misconduct; 18 U.S.C. § 798 Disclosure of Classified Information; 18 U.S.C. § 1385 Posse Comitatus Act; 29 U.S.C. § 102 Public Policy in Labor Matters; 29 U.S.C. § 178; 29 U.S.C. § 158; 19 U.S.C. §§201-209 Fair Labor Act; 29 U.S.C. § 663 Labor Management Relations. ECF No. 4 at 14-20. Defendant seeks \$12.2 million in damages, \$6.6 million in punitive damages, \$16,560.18 in lost wages, and the dishonorable discharge of military defendants. Id. at 29-30.

As to defendant Military Police Kirkland, plaintiff alleges Kirkland violated the Military Police Professional Code of Conduct and the “National Security Defense Act R.S.C. 1985” by making a statement and remark to plaintiff’s employer, People Ready manager Rob Frye, about plaintiff being an individual who has sex with minors and is a pedophile. ECF No. 4 at 21.

As to defendant Rob Frye, who plaintiff identifies as the “Caucasian manager” of People Ready, Trueblue Inc., plaintiff alleges discrimination on the basis of “origin,” retaliation, and breach of contract, along with “other federal laws of violation.” Id. at 22.

As to defendant “Mrs. Hayward Trueblue” plaintiff alleges a violation of Title VII of the Civil Rights Act of 1964 and violation of the National Labor Relations Act by choosing not to

remedy plaintiff's suspension complaint submitted to Human Resources. Id. at 24.

As to defendant USAF Lieutenant Bringearu of the United States Air Force 60th Air Mobility Squadron, plaintiff alleges involvement in this case by "Army Regulation AR 360." Lieutenant Bringearu allegedly made available to plaintiff electronic mail addresses of the military government at Travis Air Force Base, to which plaintiff could forward the complaints regarding the abridged contract with People Ready and the United States Government. Id. at 24.

III. Analysis

1. Plaintiff's Claims Fail Under Fed. R. Civ. P. 8

The substance of plaintiff's FAC is obscured by the sheer volume of claims, most of which do not appear to connect to the identified defendants. The court finds the allegations in plaintiff's complaint so vague and conclusory that it is unable to determine whether the current action is frivolous or fails to state a claim for relief. The undersigned has determined that the complaint does not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice and state facts supporting the elements of the claim plainly and succinctly. Jones v. Cmty. Redevelopment Agency of City of Los Angeles, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity acts which defendants engaged in that support plaintiff's claim. Id. Further, plaintiff must include claims against each defendant. Here, plaintiff only submits facts as to defendants Kirkland, Frye, and Hayward. The facts associated with defendant Bringearu do not appear connected to any legal claim.

2. Plaintiff Cannot Bring Criminal Causes of Action

Plaintiff is again informed that he cannot seek relief under criminal statutes; his claims under Title 18, the criminal code, cannot proceed. "Criminal proceedings, unlike private civil proceedings, are public acts initiated and controlled by the Executive Branch." Clinton v. Jones, 520 U.S. 681, 718 (1997). Accordingly, Title 18 of the United States Code does not establish any private right of action and cannot support a civil lawsuit. See Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980) (criminal provisions provide no basis for civil liability). Plaintiff therefore cannot pursue several of the claims presented in the complaint, which are predicated on alleged

violations of the criminal code. Though plaintiff no longer appears to allege criminal causes of action against particular defendants, he continues to maintain them as causes of action in the FAC. ECF No. 4 at 19.

3. Plaintiff Does Not State a Title VII Claim

The complaint does not allege sufficient facts to support a Title VII claim of sex discrimination or harassment, or national origin discrimination. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* prohibits employers from discriminating against employees on the basis of “race, color, religion, sex, or national origin.” See 42 U.S.C. § 2000e-2(a). To establish a prima facie case of disparate treatment discrimination under Title VII, a plaintiff must show that he (1) is a member of a protected class; (2) was qualified for and was performing his job satisfactorily; (3) experienced an adverse employment action; and that (4) similarly situated persons outside his protected class were treated more favorably, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination. Hawn v. Exec. Jet Mgmt., Inc., 615 F.3d 1151, 1156 (9th Cir. 2010).

If plaintiff is attempting to bring a sexual harassment claim, the creation of a “hostile work environment” through harassment is another form of prohibited discrimination under Title VII. Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 78 (1998); Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 64–65 (1986). “A hostile work environment claim involves a workplace atmosphere so discriminatory and abusive that it unreasonably interferes with the job performance of those harassed.” Brooks v. City of San Mateo, 229 F.3d 917, 923 (9th Cir. 2000). “To prevail on a hostile workplace claim premised on...sex, a plaintiff must show: (1) that he was subjected to verbal or physical conduct of a...sexual nature; (2) that the conduct was unwelcome; and (3) that the conduct was sufficiently severe or pervasive to alter the conditions of the plaintiff’s employment and create an abusive work environment.” Vasquez v. Cty. of Los Angeles, 349 F.3d 634, 642 (9th Cir. 2003), as amended (Jan. 2, 2004), as amended (Jan. 2, 2004), as amended (Jan. 2, 2004). “The working environment must both subjectively and objectively be perceived as abusive.” Brooks, 229 F.3d at 923–24 (noting frequency, severity, and level of interference with work performance as factors “particularly relevant to the inquiry”).

1 Plaintiff only expressly alleges a Title VII claim against human resources professional
2 “Mrs. Hayward,” for failing to remedy his complaint regarding a suspension. ECF No. 4 at 24.
3 This allegation fails to satisfy any of the requirements described above. Even if the court
4 assumed that plaintiff intended to bring a Title VII claim against the other defendants, none of
5 plaintiff’s allegations satisfy the elements of a Title VII claim. Accordingly, the FAC does not
6 state a Title VII claim.

7 4. Breach of Military Codes of Ethics and Military Law are Not Properly Brought

8 First, the violation of an internal organizational code of ethics is not a cause of action and
9 cannot be heard in this court. Second, the “National Security Defense Act R.S.C. 1985,” which
10 defendant Kirkland is alleged to have violated, appears to be Canadian law inapplicable here.
11 Third, to the extent plaintiff attempts to bring claims pursuant to the Uniform Code of Military
12 Justice (claims under Title 10), that code generally applies to persons who are members of the
13 armed forces, not to private citizens or non-military government actors. See 10 U.S.C. § 802.
14 Plaintiff has not alleged how the Uniform Code of Military Justice applies here. To the extent
15 plaintiff still intends to bring claims under the Posse Comitatus Act, the court reminds him that
16 “The PCA is a criminal statute. It does not authorize a civil cause of action.” Panagacos v.
17 Towery, 782 F. Supp. 2d 1183, 1190 (W.D. Wash. 2011), aff’d, 501 F. App’x 620 (9th Cir. 2012).
18 Because there is no civil cause of action available under the PCA, plaintiff’s PCA claim cannot
19 move forward. Because the Title 10 and PCA claims are not referenced in his actual allegations
20 against the defendants, it may have been plaintiff’s intention to drop these claims. However, to
21 do so, plaintiff should remove reference to them from his complaint entirely.

22 5. Amendment

23 For the reasons explained above, the FAC is subject to summary dismissal under 28
24 U.S.C. § 1915(e)(2) for failure to state a claim upon which relief may be granted. Rather than
25 recommend dismissal of the action at this time, the undersigned will grant plaintiff a final
26 opportunity to amend his complaint.

27 If plaintiff chooses to amend, he must set forth the facts upon which the court’s
28 jurisdiction depends, and set forth his facts and causes of action plainly and clearly in numbered

1 paragraphs. Fed. R. Civ. P. 8(a). Plaintiff must separately state each legal claim, and provide
2 factual support for each claim, including who did what, and how that action violated the law.
3 Plaintiff should only bring causes of action that are related to one another, and should allege
4 specific facts and legal claims against each defendant.

5 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
6 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
7 complaint be complete in itself without reference to any prior pleading. Once plaintiff files an
8 amended complaint, the original pleading no longer serves any function in the case. Therefore, in
9 an amended complaint, as in an original complaint, each claim and the involvement of each
10 defendant must be sufficiently alleged.

11 Plaintiff is informed that if the second amended complaint contains claims based on
12 criminal statutes or on the Posse Comitatus Act, the undersigned will recommend that those
13 claims be dismissed with prejudice. These claims cannot be cured by amendment. Claims under
14 Title VII or any state law theory of relief must include factual allegations that demonstrate each
15 element of each defendant's liability. Only claims that are properly joined will be allowed to
16 proceed.

17 **IV. Pro Se Plaintiff's Summary**

18 Your amended complaint cannot be served because it does not give facts supporting any
19 legal claims, and it makes some claims that cannot be brought. You cannot bring any criminal
20 causes of action, a cause of action under the Posse Comitatus Act, or a cause of action based on
21 an organization's internal code of ethics. You need to provide more facts about your Title VII
22 claim. In order to move forward with this and any other claims, you need to provide a second
23 amended complaint with clear facts to support each claim, including who did what, and how that
24 action violated the law. Your second amended complaint should only bring claims that are
25 related to one another. You are being given a 30 days to amend your complaint. If you do not do
26 so within 30 days, this case will be dismissed.

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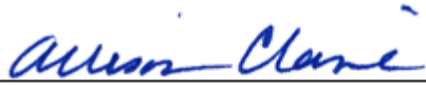
V. Conclusion

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's First Amended Complaint (ECF No. 4) is found on screening not to state any claim on which relief may be granted; and

2. Plaintiff is granted thirty days from the date of service of this order to file a Second Amended Complaint that complies with the requirements of the Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number assigned this case and must be labeled "Second Amended Complaint"; plaintiff must file an original and two copies of the amended complaint; failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

DATED: July 8, 2020


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE